IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/09/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

WRIT PETITION No.14889 of 2001

P.Jayarani .. Petitioner

-Vs-

1.The Director of School Education,
College Road, Chennai-600 006.

2.The Joint Director of School Education,
(Higher Secondary) and Appellate
Authority, College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Tirunelveli,
Nellai District.

4.The District Educational Officer,
Tenkasi,
Nellai District.

5.The Secretary,
Ponpozhi Sir Thirumalai Kumaraswamy,
Devasthanam Girls Higher Sec. School,
Courtallam, Tenkasi Taluk,
Nellai District.

6.Tmt.V.Velammal .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Certiorarified Mandamus for the
reasons stated in therein.

For Petitioner : Mr.R.Saseetharan

For Respondents 1 to 4 : Mr.V.R.Rajasekaran,
Spl. Govt. Pleader.
For Respondent-5 : Mr.G.Sukumar,
Spl. Govt. Pleader,HR&CE.
For Respondent-6 : Mr.K.Sridhar

:J U D G M E N T

This writ petition has been filed for quashing the order dated 27.7.2001 passed by the second respondent wherein the second respondent had disposed the order relating to promotion of the petitioner as headmistress and has directed for promotion of the sixth respondent as headmistress.

2. The facts giving rise to present the writ petition are as follows:-

Sri T.K.D. Girls Higher Secondary School, Courtallam in Nellai District is a private aided school and is governed by the Tamilnadu Private Schools Regulation Act. A vacancy in the post of Headmaster arose on 31.5.1995 due to retirement of the incumbent and the present sixth respondent was allowed to continue as the incharge Headmistress. Subsequently, the School Committee conducted a regular selection and held an interview for the purpose and thereafter selected the present petitioner for the post of Headmistress. A proposal was sent to the District Educational Officer for approval. Since the District Educational Officer did not pass any orders, the petitioner had filed W.P.No.9395 of 1997 which was disposed on 29.6.1997 with a direction to the District Educational Officer to consider the proposal. Subsequently by an order dated 31.7.1997, the District Educational Officer refused to grant approval. The petitioner filed appeal before the Joint Director (Higher Secondary), who rejected the appeal. The aforesaid order was challenged by the petitioner in W.P.No.10516 of 1 998 . In the meantime, the sixth respondent had also filed W.P.No.6663 of 1997 against the order promoting the present petitionerheadmistress and she had also filed W.P.No.17041 of 1995 seeking to quash the memorandum of charges levelled against her. Against the interim order passed in the latter writ petition, the management had filed Writ Appeal No.411 of 1996 and the present petitioner had filed Writ Appeal No.1543 of 1999 against the order refusing to grant interim stay in the writ petition filed by her. The various Writ Appeals were disposed on 30.1.2001, wherein the Division Bench observed that the Appellate Authority should consider the question of selection of the present petitioner and non-selection of the present sixth respondent and thereafter the Education Department is to consider the question of granting or refusing the approval. The Appellate Authority after going through the proceedings of the Selection Committee, disapproved the proposal to appoint the petitioner as Headmistress and on the other hand, directed that the sixth respondent should be appointed as the Headmistress. The Appellate Authority has observed that the merit of the present petitioner and the sixth respondent appear to be more or less the same and the sixth respondent being senior should have been promoted, keeping in view of the provisions contained in Rule 15(4) of the Tamilnadu Private Schools Regulation Rules.

3. There is no dispute that selection of Headmistress is to be made on the basis of merit, but if merit is found to be equal then the teacher, who is senior, is to be appointed as per Rule 15(4).

4. The learned counsel appearing for the petitioner has contended that the Selection Committee having followed a particular procedure of finding out the merit of the candidates, the Appellate Authority could not have substituted its own selection process and come to a different conclusion. It has also been contended that the Appellate Authority erroneously proceeded on the assumption that marks had not been awarded in each category.

5. There is no doubt that the question of selection of Headmistress in accordance with Rule 15(4) is vested with the School Committee and ordinarily in the absence of arbitrariness in such orders, the function of the District Educational Officer is to approve the same. Even though the power of approval vested with the District Educational Officer, the power has to be exercised judiciously and not in arbitrary matter and the District Educational Officer ordinarily should not refuse to accord promotion unless it is found that the order of the Committee is arbitrary. The Joint Director is constituted the Appellate Authority over the orders passed by the District Educational Officer relating to grant or refusal to grant approval. Therefore, the ambit of jurisdiction of the Appellate Authority is the same as that of the District Educational Officer. Such authorities are not constituted as Appellate Authorities as such, over the orders of the School Committee or the Selection Committee. However, they are vested with the power to see that the School Committee or the Selection Committee does not act arbitrarily. The submission of the counsel for the petitioner to the effect that the Appellate Authority in this case has substituted his own method for the method adopted by the Selection Committee has got some force.

6. The Selection Committee, purported to examine the merit of the candidates on several heads such as personality, general and technical knowledge, answering of questions before the interviewers of the Committee, additional qualifications, the manner and behaviour before the interviewer, general knowledge and academic results in subjects of candidates in previous years and pendancy of disciplinary proceedings. However, the copies of the papers produced by the Managing Committee showing the marks obtained by different candidates do not give any details as rightly pointed out by the Appellate Authority. Even though, it has been indicated in the counter affidavits of management as well as in the writ petition, that the various aspects which have been extracted earlier were taken to consider while awarding marks, there is no contemporaneous document to support such assertion and the marks appear to have been awarded in a general manner. The observation of the Appellate Authority therefore does not appear to be baseless and that part of the order relating to the disapproval of the selection of the petitioner cannot be said to be arbitrary.

7. The learned counsel appearing for the petitioner has relied upon decisions of Supreme Court in Kiran Gupta & Ors. etc. etc. vs. State of U.P. & Ors. etc. (2000 (6) Supreme 555) wherein it has been indicated that it may not be necessary to award mark in each item. The aforesaid Supreme Court decision was in the context of challenge to the respondent providing for selection on the basis of performance in the interview and is distinguishable from in the present case.

8. The question, however, remains regarding the direction of Appellate Authority to promote the sixth respondent Rule 15(4) contemplates that promotion to the post of Headmaster should be on the basis of merit and where merit is equal, the person who is senior should be preferred. In the present case, the Appellate Authority has purported to ascertain the relative merits of the candidates by referring to the results in the examinations in various subjects taught by the petitioner and the sixth respondent. The merit which has to be adjudged cannot be confined to the question of results of the students in the relevant subjects. The selection is for the post of

Headmaster which has got various administrative functions, apart from the function of teaching. While considering the question of merit for the purpose of planning selection of Headmaster, various other aspects are to be taken into account and not merely the proficiency in the subject taught by the particular teacher. In the present case, the Appellate Authority has merely confined his attention to the results of the students in the relevant subjects. However, since the question of appointing Headmaster was involved, administrative ability as well as other relevant circumstances are also to be taken into account. The direction given by the Appellate Authority for appointing the sixth respondent therefore cannot be sustained.

9. As already indicated, the question of selection of Headmaster is essentially a matter which is to be left to the School Committee. In the present case, the initial process of selection undertaken by the School Committee had been found fault with he earlier occasion by the Educational Officer as well as by the Appellate Authority and on the subsequent occasion, by the Appellate Authority. Keeping in view of the various facts and circumstances of the case, I think it is necessary in the present case to give a direction to the School Committee to undertake afresh the process of selection of Headmaster by considering the cases of all eligible teachers. This process may be completed by the School within a period of two months from the date of communication of the order and the question of approval should be considered by the relevant authority within a period of two months from the date of communication of the selection by the School Committee. Subject to the abovesaid direction, the writ petition is disposed of.

No costs. Consequently, connected WPMP Nos.37 of 2002 and 22160 of 2001 are closed.

Index: Yes.
Internet:Yes.
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Judgment in
W.P.No.14889 of 2001